THE UNITED STATES, PLAINTIFFS IN ERROR *vs.* THOMAS TINGEY, DEFENDANT IN ERROR.

There is no statute of the United States expressly defining the duties of pursers in the navy. What those duties are, except so far as they are incidentally disclosed in public laws, cannot be judicially known to this court. If they are regulated by the usage and customs of the navy, or by the official orders of the navy department, they properly constitute matters of averment, and should be spread upon the pleadings.

A bond, voluntarily given to the United States and not prescribed by law, is a valid instrument upon the parties to it, in point of law. The United States have in their political capacity a right to enter into a contract, or to take a bond in cases not previously provided by law. It is an incident to the general right of sovereignty; and the United States being a body politic, may, within the sphere of the constitutional powers confided to it, and through the instrumentality of the proper department to which those powers are confided, enter into contracts not prohibited by law, and appropriate to the just exercise of those powers. To adopt a different principle would be to deny the ordinary rights of sovereignty, not merely to the general government, but even to the state governments, within the proper sphere of their own powers; unless brought into operation by express legislation. A doctrine to such an extent is not known to this court, as ever having been sanctioned by any judicial tribunal.

A voluntary bond taken by authority of the proper officers of the treasury department to whom the disbursement of public money is entrusted, to secure the fidelity in official duties of a receiver or an agent for disbursing of public moneys, is a binding contract between him and his sureties, and the United States; although such bond may not be prescribed or required by any positive law. The right to take such a bond is an incident to the duties belonging to such a department, and the United States being authorized in a political capacity to take it, there is no objection to its validity in a moral or a legal sense.

Where the United States instituted an action for the recovery of a sum of money on a bond given with sureties by a purser in the navy, and the defendants, in substance, pleaded that the bond, with the condition thereto, was variant from that prescribed by law, *and was under colour of office extorted from the obligor and his sureties contrary to the statute*, by the then secretary of the navy, as the condition of the purser's remaining in office and receiving its emoluments; and the United States demurred to this plea; it was held that the plea constituted a good bar to the action.

No officer of the government has a right by colour of his office to require from any subordinate officer as a condition of his holding his office, that he should execute a bond with a condition different from that prescribed by law. That would be, not to execute, but to supersede the requisites of the law. It would be very different where such a bond was, by mistake or otherwise, voluntarily substituted by the parties for the statute bond, without any coercion or extortion by colour of office.

ERROR to the circuit court of the district of Columbia, for the county of Washington.

[The United States *vs.* Tingey.]

This suit was instituted in the circuit court by the United States against Thomas Tingey as one of the sureties of Lewis Deblois, who had been appointed a purser in the navy of the United States.

The declaration first filed was in the common form of debt on a joint and several bond, and the defendants prayed oyer of the bond and condition, and pleaded eight several pleas. On the first, second, and seventh pleas, issues in fact were joined; and to the other pleas the United States demurred generally. The circuit court overruled the demurrers and gave judgment against the United States, who prosecuted this writ of error.

Pending the pleadings, the district attorney of the United States filed another count to the declaration, in which the bond and the condition were set forth, with averments that Lewis Deblois was a purser in the navy of the United States; that he received large sums of money in that capacity, and that he had refused to account for the same, according to the provisions of the laws of the United States, &c. By agreement of counsel all the pleadings were considered as applicable to this as well as to the first count in the declaration.

The bond was executed on the 1st day of May 1812 by Lewis Deblois, Thomas Tingey, Franklin Wharton, Elias B. Caldwell, William Brent and Frederick May, in the sum of ten thousand dollars. The condition was as follows:

"The condition of the above obligation is such, that if the said above bound Lewis Deblois shall regularly account, when thereunto required, for all public moneys received by him from time to time, and for all public property committed to his care, with such person or persons, officer or officers of the government of the United States as shall be duly authorised to settle and adjust his accounts; and shall moreover pay over, as he may be directed, any sum or sums that may be found due to the United States upon such settlement or settlements, and shall faithfully discharge in every respect the trust reposed in him, then the obligation to be void and of no effect, otherwise to remain in full force and virtue."

The following indorsement was made upon the bond:

"It is expressly understood and agreed between the secretary of the navy (acting in behalf of the United States) and the within named obligors, that the said obligors are not to be

held responsible for any loss that may be sustained in the moneys or public property committed to the care of the within named Lewis Deblois as purser, by any capture, sinking or stranding, or other unavoidable casualty; or if, by any such circumstance or event, the said purser should be deprived of his books and papers, and be thereby rendered incapable of producing the necessary evidence or means of accounting for the public money or property with which he may be charged, the said obligors shall be exonerated on producing satisfactory evidence of the facts, unless it can be shown that the money or public property has been misapplied or diverted from the public service."

The third plea demurred to by the United States set forth, that "every neglect, failure or omission whatsoever of the said Lewis Deblois regularly to account, as in and by the said condition is required, and to pay over such sum or sums of money as in and by the said condition is also required, or in any other manner or respect whatsoever to discharge the trust reposed in him, as in and by the said condition is also required, was caused by and the direct consequence of the gross and wilful neglect and wrong and illegal acts of the proper officers of the government of the United States, under whose control and direction all the public moneys and public property received by the said Lewis Deblois, and committed to his charge, at any time or times, after the sealing and delivery aforesaid, were placed by the authority of the plaintiffs, and who were duly authorised to settle and adjust his accounts, and to superintend, direct and control the discharge of the trust reposed in him as aforesaid, to the manifest and grievous injury and defrauding of the said defendant, &c."

The fourth plea alleged, that after the 13th day of March 1812, and before the 1st day of May in the same year, and before the execution of the bond, Lewis Deblois was duly appointed a purser in the navy, and continued in the service until the 1st of March 1817, and continued and so continues in the service, and to discharge the duties of purser, and that all the moneys and all public property received by him, or for which he was accountable after the execution of the bond, were received by him and committed to his care as such purser in virtue of his said appointment, and in discharge of the

trust reposed in him as such purser, and not otherwise, and that no money or public property was committed to him but as purser under the said appointment. And, &c.

The fifth plea alleges that the defendant ought not to be charged with the said writing obligatory, or any thing therein contained, because the act of congress of the 13th day of March 1812 required, that the pursers in the navy of the United States, shall be appointed by the president of the United States, by and with the advice and consent of the senate; and from and after the 1st day of May next, no person shall act in the character of purser who shall not have been thus first nominated and appointed, excepting persons on distant service, who shall not remain in service after the 1st day of July next, unless nominated and appointed as aforesaid. And every person, before entering upon the duties of his office, shall give bond with two or more sufficient sureties, in the penalty of ten thousand dollars, conditioned faithfully to perform all the duties of purser in the navy of the United States, which said law was in full force and unrepealed on the 1st day of May in the said year, when the said obligation was so as aforesaid executed and delivered. And the said defendant further says, that protesting that the said Lewis Deblois was not so appointed by the president of the United States by and with the advice and consent of the senate, as in and by said act of congress is required; yet he further says, that after the passing of the said act, and before the day of the date of the ensealing and delivery of the said writing obligatory, the navy department of the United States did cause the said writing obligatory to be prepared, and to be transmitted to the said Lewis Deblois, and did require and demand of him that the said writing obligatory, and the condition thereunder written, should be executed by the said Lewis Deblois, with sufficient sureties, before he should be permitted to remain in the said office of purser, or to receive the pay and emoluments attached to said office of purser; and the said defendant further in fact says, that the said condition so as aforesaid underwritten is variant and wholly different from the condition required in and by the said act of congress, and varies and enlarges the duties and responsibilities of the said Lewis Deblois and his sureties, and that the same was under colour and

pretence of said act of congress, and under colour of office required and extorted from Lewis Deblois, and from the defendant as one of his sureties, against the form, &c. of the statute by the then secretary of the navy, wherefore he says the said writing obligatory is void and illegal, and this, &c.

The sixth plea alleges that the condition of the bond is wholly variant and different from the condition which by law ought to have been required, and imposed other and different responsibilities upon Deblois and on his sureties, and that the said writing obligatory and the condition was prepared by and under the directions of the secretary of the navy of the United States, and was by him transmitted to Deblois, and he, Deblois, was then and there required to execute the same and the illegal condition, before he would be deemed and recognized as a purser in the navy of the United States, or permitted to receive any pay or emoluments as such, under colour and pretence of law, and under colour of the office of the said secretary of the navy; whereby, as the defendant averred, the said writing obligatory, and the condition there underwritten is wholly void and of no effect. And this, &c.

The eighth plea alleges that the United States ought not to maintain their action, because by the act of congress of 13th March 1812, it was among other things enacted, that every purser, before entering upon the duties of his office, shall give bond with two or more sufficient sureties, in the penalty of ten thousand dollars, conditioned faithfully to perform all the duties of purser in the navy of the United States, which said act of congress was in full force and unrepealed at the time when the said Lewis Deblois was appointed purser in the navy, and also at the time when the said writing obligatory was sealed and delivered by this defendant, and for a long time thereafter, to wit until 1817; and the defendant says, that the said Deblois, before entering upon the duties of his office or at any time thereafter, was not required to give bond in manner and form as is prescribed as aforesaid, nor did he give such bond; without this that the said Deblois received any funds, property or money from said plaintiffs, in any other right, capacity or character, than as such purser, or was in any other right, capacity or character, bound to keep, preserve, disburse and account for the same. And this, &c.

[The United States *vs.* Tingey.]

The case was argued by Mr Berrien, attorney general, and Mr Swann, district attorney, for the United States; and by Mr Coxe and Mr Jones for the defendant.

For the plaintiffs in error it was contended, that the pleadings on the part of the United States properly set forth the bond and the indorsement upon it, the indorsement being a part of the bond. 1 Wash. Rep. 14. Upon the declaration it appears that Deblois was appointed a purser in the United States; and as such received large sums of money, for which he has failed to account.

As to the pleas to which demurrers were entered, it was argued that the third plea alleges the failure of Deblois to account arose from the gross and wilful negligence of the officers of the United States, under the control and direction of whom were placed the moneys and public property in the hands of Deblois.

To this it is answered, that negligence cannot be imputed to the United States; and if it were so imputable, it is not sufficiently pleaded. It is not shown in what manner, or how the negligence arose, or in what it consisted. The rule is, that what is alleged in pleading must be alleged with certainty. Cited 9 Wheat. 720; 10 Wheat. 184; Stephens on Pleading, 342.

If the fourth plea is intended to raise the question whether Lewis Deblois was legally an officer of the United States, as purser, after the 1st of May 1817, he not having given the new bond required by the act of March 1817; it is answered, that the act is director to the officers of the government, and their failure to comply with its requirements cannot release the sureties in the bond which they executed. The United States *vs.* Vanzandt, 10 Wheat. 184, &c.

The remaining pleas present the question of the validity of the bond, on the ground that it does not conform to the act of 1812.

It may be well argued that the fifth plea is altogether deficient in form. It is bad for duplicity; but as it was important to have the question determined which is raised by it, a general demurrer was entered.

A statutory bond, the condition of which varies from the

form prescribed by the statute, is not therefore altogether void. It is good so far as it conforms to the statute; and if void, it is only so as to the residue. A voluntary bond, taken without the authority of the statute, is good; a bond required *colore officii* may be a voluntary bond, and is so, unless it be obtained by fraud, circumvention, or oppression. It is admitted that the defendant's plea alleges that this bond was, under colour and pretence of the act of congress, and under colour of office, required and extorted from Deblois; and there is a general demurrer to this plea. But a demurrer admits only the facts which are pleaded. This demurrer admits that the bond was required by the secretary of the navy, acting under the authority given by the statute. Whether insisting on this bond was extortion, is a question of law arising on the facts, which is not admitted by the demurrer.

It is contended that a bond voluntarily given by a public officer, conditioned for the faithful performance of the duties of his office, is valid; although required by no particular statute.

If this is not so, it must be, 1. Because the absence of an express statutory authority to require the bond renders its condition unlawful; or 2. Because the government is incompetent to become a party to such a bond.

A reference to cases establishes the following positions:

1. That a bond given by or to a public officer, or to the government, is not invalid merely because there was no law which specifically authorised the one to demand, or required the other to give it: that it is only void when the condition is against law, requiring something to be done which is malum in se aut malum prohibitum; or the omission of a duty; or the encouragement of such crimes or misdemeanours.

2. That although a statute which authorises a bond to be taken may have specified the terms of the condition; it does not therefore render void a bond voluntarily given, though the condition be variant from that prescribed by the statute.

3. That a bond is not less voluntary because it has been required by a public officer, but not contrary to law. Mitchell *vs.* Reynolds, 1 Peere Wms. 181. 1 Inst. 206. Palm. 172. Norton *vs.* Sims, Hob. 12. Fitzherbert's Abrid. 13. Dyer, 18. 2 Strange, 745, 1137. Rex *vs.* Bradford, 2 Lord Ray.

1327. The African Company *vs.* Torrane, 6 T. R. 588. 2 Dall. 118. The Commonwealth *vs.* Wolbert, 6 Binn. 292. Morse *vs.* Hodson, 5 Mass. 314. Thomas *vs.* White, 12 Mass. 367.

It is competent to the government of the United States to become a party to a voluntary bond executed by one of its officers, without any authority given by a legislative act. It is essentially incident to sovereignty, without any express grant, that such a power shall exist. According to the cases which have been referred to, such a power belongs to a corporation; to a subordinate agent of the government; and, a fortiori, it belongs to the government itself. The Postmaster General *vs.* Early, 12 Wheat. 136. Dugan *vs.* The United States, 3 Wheat. 172.

If the government or an officer on their behalf can make the United States parties to a bill of exchange; can vest in them the legal title to such a bill as indorser; and this without legislative authority; why may they not in like manner become obligees in a bond. Is the capacity of the government less than that of a corporation, or of a subordinate officer, or of a private individual?

It has been the constant practice of the government to take such bonds, without express legislative authority; and it has been the understanding of congress that such bonds were regular. In many acts bonds are directed to be taken, without the form or the person to whom they are to be taken being specified. The bonds taken from marshals, registers, receivers and surveyors, are of this description.

If the United States are competent to become parties to such a bond without legislative requisitions, it is equally true that the right to direct or require such a bond belongs to the executive. It is a part of its constitutional power: nor does the circumstance that the authority of the legislature may also direct the taking of a particular bond negative the existence of such a power. The president is enjoined "to take care that the laws be faithfully executed." In the performance of this trust, he not only may, but he is bound to avail himself of every appropriate means not forbidden by law. When a law is passed authorising the appointment of an officer, or appropriating money to be disbursed under the direction of the presi-

dent, are not the duties of the executive such as to impose upon him the appointment of agents to perform the trusts reposed in him; and is not the authority to take security for the faithful exercise of such agencies necessarily included in the power of appointment? The subordinate agents of the executive act under the authority of the chief magistrate; their acts are presumed to be his acts.

This bond was taken under the direction of the president to secure the performance of the trust committed to the officer; in the language of the constitution to "take care that the laws be faithfully executed." If the means be appropriate to the end, does not the injunction to use such means flow from the constitution, and is it not therefore imperative? Could congress increase the obligation, or give greater validity to the act by reiterating the mandate? It is upon these principles claimed that this bond is valid as a voluntary bond, although not required by any statute.

Is it a voluntary bond; or was it obtained by fraud, circumvention, or oppression?

The bond was required by the secretary of the navy, in the performance of his duty; and was voluntarily given by the parties to it. The cases which have been cited show that if parties submit to the requisition of a bond of this character, they are bound by it. The decision of this court in Speake *vs.* The United States, 9 Cranch, 28, establishes the principle that a bond required by a public officer, and given in conformity to that requisition, is still a voluntary bond, unless it be obtained by fraud, circumvention or oppression. There is no pretence that any such means were used in this case. The government and people of the United States are interested to enforce the faithful discharge of public duty by those who are entrusted to perform it. They have a right to require it, and are entitled to be indemnified for a failure to comply with the requisition.

The bond was authorised by law. It is alleged there is a variance between the condition prescribed by the act and that inserted in the bond. This is denied. It is contended that the condition of the bond conforms substantially to that required by the act. The condition and the indorsement taken together clearly show that the whole object of the bond was

to provide for the full performance o those duties imposed upon Deblois by his station, and if more is required than the law authorised, the whole of the condition does not become void thereby; but that part which is lawful and authorised remains operative. Shep. Touchstone, 70. Piggot's case, 11 Coke, 27. Yale *vs.* The King, 5 Vin. 99. Armstrong *vs.* The United States, 1 Peters's C. C. Rep. 46.

The condition prescribed by the act is "faithfully to perform the duties of purser in the navy of the United States." The condition of the bond taken is, that Lewis Deblois "shall regularly account, when thereunto required, for all public moneys received by him from time to time, and for all public property committed to his care, with such person or persons, officer or officers of the government of the United States, as shall be duly authorised to settle and adjust his accounts, and shall moreover pay over, as he may be directed, any sum or sums of money that may be found due to the United States upon any such settlement, and shall also faithfully discharge in every respect the trust reposed in him."

There is no one of these requisitions which is not strictly within the duties of a purser of the United States: 1. Regularly to account, when required, for all public moneys received by him from time to time, and for all public property committed to his care. 2. To account with such person or persons, officer or officers of the government, as shall be duly authorised to settle and adjust his accounts. 3. To pay over, as he may be directed, any sum or sums of money that may be found due to the United States, on any such settlement. 4. Faithfully to discharge, in every respect, the trust reposed in him. These are all the requisitions in the bond.

Mr Coxe and Mr Jones, for the defendant in error, stated, that if there was any thing inapplicable in the pleas to the declaration, it arose from the circumstance that these pleas were entered to the first count; and the second count having been afterwards added, these pleas were suffered to remain, as it was not considered that any material variance in the case was presented by the additional count.

They contended, 1. That at common law such a bond as that upon which this suit was brought has no validity, independent of the facts in avoidance set forth in the pleas.

2. That the bond varies from that authorised by the statute; and that such a variance renders it of itself void.

3. That having been extorted colore officii, it is void.

4. That sufficient facts are set forth in the pleas to justify a non-compliance with the terms prescribed in the condition.

1. At common law the bond is void. No bond is valid which is given to the king by an officer for the faithful performance of his duties as an officer. 5 Com. Dig. 219, 207. If the bond is made valid by the statute, it must be by its conformity to the requisitions of the statute. But this bond does not in any part of it purport to be a statutory bond. It does not recite that Deblois was a purser; it has no reference to any public office or public duty. He is faithfully to discharge the trusts reposed in him, without designating what the same are.

2. A statutory bond not conforming to the requisites of the statute is void. If the principle of the common law, which has been contended for, is correctly stated, every bond required by statute must pursue its requisites. The United States *vs.* Hipkins, 2 Hall's Law Journal. 3 Wash. Rep. 10. Speake *vs.* The United States, 9 Cranch, 39.

3. The bond having been extorted *colore officii*, is void. The demurrer to this plea admits the allegation that the bond was extorted. Until it was executed, Deblois could not execute the duties of purser. The United States having demurred to the plea charging the extortion of the bond are estopped to deny it; and the defendant is entitled to the benefits of such an admission. Cited 7 Cranch, 227. 3 Inst. 149, c. 69.

Mr Justice STORY delivered the opinion of the Court.

This is a writ of error to the circuit court of the district of Columbia, sitting at Washington. The original action was brought by the United States upon a bond executed by Lewis Deblois, and by Thomas Tingey and others as his sureties, on the 1st of May 1812, in the penal sum of ten thousand dollars, upon condition that if Deblois should regularly account, when thereto required, for all public moneys received by him from time to time, and for all public property committed to his care, with such person or persons, officer or officers of the government of the United States as should be duly authorised to set-

tle and adjust his accounts, and should moreover pay over, as might be directed, any sum or sums that might be found due to the United States upon any such settlement or settlements, and should also faithfully discharge, in every respect, the trust reposed in him, then the obligation to be void, &c. In point of fact, Deblois was at the time a purser in the navy, though not so stated in the condition; and there is an indorsement upon the bond, which is averred in one of the counts of the declaration to have been contemporaneous with the execution of the bond, which recognizes his character as purser, and limits his responsibility as such; and the bond was unquestionably taken, as the pleadings show, to secure his fidelity in office as purser.

The declaration contains two counts: one in the common form for the penalty of the bond; and a second setting forth the bond, condition and indorsement, and averring the character of Deblois, as purser, his receipt of public moneys, and the refusal to account, &c. in the usual form.

Several pleas were pleaded, upon some of which issues in fact were joined. To the third, fourth, fifth, sixth and eighth pleas, the United States demurred, and judgment upon the demurrers was given for the defendant in the circuit court; and the object of the present writ of error is to revise that judgment.

There is no statute of the United States expressly defining the duties of pursers in the navy. What those duties are, except so far as they are incidentally disclosed in public laws, cannot be judicially known to this court. If they are regulated by the usages and customs of the navy, or by the official orders of the navy department, they properly constitute matters of averment, and should be spread upon the pleadings. It may be gathered, however, from some of the public acts regulating the departments, that a purser, or as the real name originally was, a burser, is a disbursing officer, and liable to account to the government as such. The act of the 3d of March 1809, ch. 95, sec. 3, provided, that, exclusively of the purveyor of public supplies, paymasters of the army, pursers of the navy, &c., no other permanent agents should be appointed either for the purpose of making contracts, or for the purchase of supplies, or for the disbursement in any other manner of moneys for the use of the military establishment, or

of the navy of the United States; but such as should be appointed by the president of the United States with the advice and consent of the senate. And the next section (s. 4) of the same act provided that every such agent, and every purser of the navy should give bond, with one or more sureties, in such sums as the president of the United States should direct, for the faithful discharge of the trust reposed in him; and that, whenever practicable, they should keep the public money in their hands in some incorporated bank, to be designated by the president, and should make monthly returns to the treasury of the moneys received and expended during the preceding month, and of the unexpended balance in their hands. This act abundantly shows that pursers are contemplated as disbursing officers and receivers of public money, liable to account to the government therefor. The act of the 30th of March 1812, ch. 47, made some alterations in the existing law, and required that the pursers in the navy should be appointed by the president, by and with the advice and consent of the senate; and that from and after the 1st day of May then next, no person should act in the character of purser who should not have been so nominated and appointed, except pursers on distant service, &c.; and that every purser, before entering upon the duties of his office, should give bond with two or more sufficient sureties, in the penalty of ten thousand dollars conditioned faithfully to perform all the duties of purser in the navy of the United States. This act, so far as respects pursers giving bond, and the imports of the condition, being in pari materia, operates as a virtual repeal of the former act. The subsequent legislation of congress is unimportant; as it does not apply to the present case.

It is obvious that the condition of the present bond is not in the terms prescribed by the act of 1812, ch. 47, and it is not limited to the duties or disbursement of Deblois as purser, but creates a liability for all moneys received by him, and for all public property committed to his care, whether officially as purser, or otherwise.

Upon this posture of the case a question has been made and elaborately argued at the bar, how far a bond voluntarily given to the United States, and not prescribed by law, is a valid instrument, binding upon the parties in point of law; in other

words, whether the United States have, in their political capacity, a right to enter into a contract, or to take a bond in cases not previously provided for by some law. Upon full consideration of this subject, we are of opinion that the United States have such a capacity to enter into contracts. It is in our opinion an incident to the general right of sovereignty; and the United States being a body politic, may, within the sphere of the constitutional powers confided to it, and through the instrumentality of the proper department to which those powers are confided, enter into contracts not prohibited by law, and appropriate to the just exercise of those powers. This principle has been already acted on by this court in the case of Dugan, Exec. *vs.* The United States, 3 Wheat. Rep. 172; and it is not perceived that there lies any solid objection to it. To adopt a different principle, would be to deny the ordinary rights of sovereignty, not merely to the general government, but even to the state governments within the proper sphere of their own powers, unless brought into operation by express legislation. A doctrine, to such an extent, is not known to this court as ever having been sanctioned by any judicial tribunal.

We have stated the general principle only, without attempting to enumerate the limitations and exceptions, which may arise from the distribution of powers in our government, or from the operation of other provisions in our constitution and laws. We confine ourselves in the application of the principle to the facts of the present case, leaving other cases to be disposed of as they may arise; and we hold that a voluntary bond taken by authority of the proper officers of the treasury department, to whom the disbursement of public moneys is entrusted, to secure the fidelity in official duties of a receiver or an agent for disbursery of public moneys, is a binding contract between him and his sureties, and the United States; although such bond may not be prescribed or required by any positive law. The right to take such a bond is in our view an incident to the duties belonging to such a department; and the United States having a political capacity to take it, we see no objection to its validity in a moral or a legal view.

Having disposed of this question, which lies at the very threshold of the cause, and meets us upon the face of the se-

cond count in the declaration, it remains to consider whether any one of the pleas demurred to constitutes a good bar to the action.

Without adverting to others, which are open to serious objections on account of the looseness and generality of their texture, we are of opinion that the fifth plea is a complete answer to the action. That plea, after setting forth at large the act of 1812 respecting pursers, proceeds to state that before the execution of the bond, the navy department did cause the same to be prepared and transmitted to Deblois, and did require and demand of him that the same, with the condition, should be executed by him with sufficient sureties, before he should be permitted to remain in the office of purser, or to receive the pay and emoluments attached to the office of purser; that the condition of the bond is variant, and wholly different from the condition required by the said act of congress, and varies and enlarges the duties and responsibilities of Deblois and his sureties; and "that the same was under colour and pretence of the said act of congress, and under colour of office required and extorted from the said Deblois, and from the defendant, as one of his sureties, against the form, force and effect of the said statute, by the then secretary of the navy."

The substance of this plea is, that the bond, with the above condition, variant from that prescribed by law, was under colour of office extorted from Deblois and his sureties, contrary to the statute, by the then secretary of the navy, as the condition of his remaining in the office of purser, and receiving its emoluments. There is no pretence then to say that it was a bond voluntarily given, or that though different from the form prescribed by the statute, it was received and executed without objection. It was demanded of the party, upon the peril of losing his office; it was extorted under colour of office, against the requisitions of the statute. It was plainly then an illegal bond; for no officer of the government has a right, by colour of his office, to require from any subordinate officer, as a condition of holding office, that he should execute a bond with a condition different from that prescribed by law. That would be, not to execute, but to supersede the requisitions of law. It would be very different where such a bond was by mistake

or otherwise voluntarily substituted by the parties for the statute bond, without any coercion or extortion by colour of office.

The judgment of the circuit court is affirmed.

This cause came on to be heard on the transcript of the record from the circuit court of the United States for the district of Columbia, holden in and for the county of Washington, and was argued by counsel. On consideration whereof, it is considered, ordered and adjudged by this court, that the judgment of the said circuit court in this cause be and the same is hereby affirmed.